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*Attorneys for Defendants  
Reckitt Benckiser LLC and RB Health (US) LLC*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

## FRESNO DIVISION

THOMAS MATTHEWS, *individually and  
on behalf of all others similarly situated,*

**Plaintiff,**

RB HEALTH (US) LLC,

### Defendants.

Case No. 1:20-cv-00854-NONE-EPG

**DEFENDANTS' MOTION AND NOTICE  
OF MOTION TO DISMISS CLASS  
ACTION COMPLAINT**

District Judge: NONE  
Hearing Date: October 9, 2020  
Hearing Location: Courtroom #4, 7th Floor

## **NOTICE OF MOTION AND MOTION**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on October 9, 2020, at 10:00 a.m., or as soon thereafter as  
4 the matter may be heard in the courtroom of Judge Lawrence J. O'Neill (Ret.), located in the Robert  
5 E. Coyle United States Courthouse at 2500 Tulare Street, Courtroom Four, Seventh Floor, Fresno,  
6 CA 93721, Defendants Reckitt Benckiser LLC and RB Health (US) LLC (collectively, “RB  
7 Health”) will and hereby do move pursuant to Federal Rules of Civil Procedure 12(b)(6) and  
8 12(b)(1) to dismiss Plaintiff’s Complaint (“Compl.”).

This motion is made on the following grounds: Plaintiff Thomas Matthews argues that advertising claims relating to RB Health's Neuriva brain health supplement are false or misleading because there is insufficient scientific support for them. But California courts have long recognized that private plaintiffs may not demand substantiation for advertising claims; a plaintiff states a claim under California's consumer protection laws only if he alleges that the advertising is affirmatively false. Plaintiff entirely fails to meet this burden here, and his Complaint should be dismissed.

15 Separately, many of Plaintiff's claims are preempted under the Nutrition Labeling and  
16 Education Act because they seek to impose standards on RB Health that are inconsistent with  
17 federal law. And Plaintiff's challenge to Clinically Proven claims fails under the reasonable  
18 consumer standard because no reasonable consumer would adopt Plaintiff's idiosyncratic  
19 interpretation of this phrase. Plaintiff's unjust enrichment claim rises and falls with his statutory  
20 claims. Finally, Plaintiff lacks standing to seek injunctive relief because he does not plausibly allege  
21 he intends to purchase the Neuriva products in the future.

22 For these reasons, RB Health respectfully requests the Court dismiss Plaintiff's Complaint  
23 in full.

24 Undersigned counsel for RB Health certifies that she met and conferred with Plaintiff's  
25 counsel regarding the substance of the Motion on September 8, 2020. Counsel discussed the  
26 grounds for the motion and the accompanying request for judicial notice. Counsel were unable to  
27 resolve the basis of the Motion or request for judicial notice during the meet and confer.

1 DATED: September 8, 2020  
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**PERKINS COIE LLP**

3 By: */s/ Lauren Watts Staniar*  
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7 *Attorneys for Defendants*  
8 *Reckitt-Benckiser LLC and RB Health (US)*  
9 *LLC*

1                   **CERTIFICATE OF SERVICE**

2       The undersigned certifies that on September 8, 2020, I caused to be filed via the CM/ECF  
3 system true and correct copies of the following documents and that the service of these documents  
4 was accompanied on all parties in the case by CM/ECF system.

5                   */s/ Lauren Watts Staniar*  
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